MASTER AND SERVANT—ASSAULT BY ANOTHER SERVANT NOT WITHIN FEDERAL EMPLOYERS' LIABILITY ACT.—Plaintiff's husband, a section foreman, was killed by a laborer in his section gang at a time when both were at work upon defendant's road; the laborer was a dangerous and quarrelsome character, and deceased had informed his superior officer of this fact. The action was brought under the FEDERAL EMPLOYERS' LIABILITY ACT (U. S. Comp. St. 1913, §§8657-8665). The district court overruled a demurrer to plaintiff's petition. *Held,* on appeal, that the order of the district court should be reversed and the demurrer sustained on the ground that the assault was not committed in the course or scope of the laborer's employment, nor in furtherance of defendant's business. *Roebuck* v. *Atchison, T. & S. F. Ry. Co.* (Kan. 1917), 162 Pac. 1153.

It is indubitably true that the test to be applied in cases of this character is whether the act committed is within the "course" or "scope of" the servant's employment. If a servant step aside even momentarily to do some act unconnected with his employment the relation of master and servant is for that time suspended. *Davis* v. *Houghtelin,* 33 Neb. 582, 50 N. W. 765; *Morier* v. *St. Paul, etc. Ry. Co.,* 31 Minn. 351. In this connection, also, a distinction should be noted between "scope of employment" and "during period of employment." *Slater* v. *Advance Thresher Co.,* 97 Minn. 305, 107 N. W. 133; *Riley* v. *Roach,* 168 Mich. 294, 134 N. W. 14. On the above points the principal case is undoubtedly correct. However, there still remains the question of defendant's negligence. Under the FEDERAL EMPLOYERS' LIABILITY ACT, *supra,* the common law rules in regard to negligence apply. The master is liable only where the injury is attributable to his negligence. *Seaboard Air Line Ry. Co.* v. *Horton,* 233 U. S. 492, 58 L. Ed. 1062. In this case the Supreme Court, speaking through PITNEY, J., after stating that the employer is not a guarantor of the safety of the place of work, says "the extent of its duty to its employees is to see that ordinary care and prudence are exercised, to the end that the place in which the work is to be performed * * * may be safe for the workmen." In the principal case the defendant company had notice of the character of the defendant's assailant. In view of this did defendant exercise ordinary care and prudence to make deceased's place of employment safe? It is submitted that this should have been left to the jury to decide. It is true that most of the cases on this topic are those in which the employee was a notorious drunkard or insane. *Arlington Hotel Co.* v. *Tanner* (Ark. 1914), 164 S. W. 286; *Missouri, K. & T. Ry. Co.* v. *Day,* 104 Tex. 237, 136 S. W. 435. However, there is no reason why the principle should be limited to such cases. A dangerous and quarrelsome character can render a place quite as unsafe as can a notorious drunkard or insane person.

PARENT AND CHILD—LIABILITY FOR TORT OF CHILD.—Defendant owned an automobile which he had purchased for the pleasure of himself and the members of his family; his adult son, with his father's permission, was driving the automobile for his (the son's) accommodation, and negligently in-